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EXTENDING THE REACH OF THE CHINESE LABOR LAW: HOW DOES THE SUPREME PEOPLE'S COURT'S 2006 INTERPRETATION TRANSFORM LABOR DISPUTE RESOLUTION?

Jill E. Monnin[†]

Abstract: Chinese workers are taking advantage of the dispute resolution tools that legal reform has provided in the past decade, including mediation, arbitration, and litigation. Despite a history of resolving disputes through informal mediation, more and more workers are relying on the new pathways of arbitration and civil suits in local courts. The 1993 Regulations on the Resolution of Enterprise Labor Disputes and the 1994 Labor Law facilitated workers' access to formal legal forums. Then, in 2006, a Supreme People's Court ("SPC") interpretation made a number of important changes to the application of the Labor Law and workers' access to dispute resolution.

The SPC interpretation of the Labor Law expands access to labor dispute resolution by providing a clear standard for determining when labor disputes arise, requiring courts to accept appeals of arbitral decisions involving specific claims, allowing the suspension of the arbitration application period, and permitting certain claims to bypass mandatory arbitration. This Comment argues that the SPC interpretation successfully responds to criticisms of dispute resolution under the Labor Law and will help to ensure that law continues to operate as a tool for China's workers and government. The SPC is likely to continue filling gaps in the law and respond with needed changes in the absence of clear legislative rules. Only the future will tell whether the potential impact of the 2006 interpretation becomes a reality.

I. INTRODUCTION

China's dramatic economic development since the country's "opening up" in the 1980s brought about important legal changes. As national and international companies turn to China's abundant and cheap labor force to produce and manufacture an entire range of goods, Chinese labor law is undergoing a dynamic rebirth and development. The 1994 Labor Law ("Labor Law"),¹ based on provisions of the 1993 Regulations on the Resolution of Enterprise Labor Disputes ("Labor Regulations"),² is the foundation for labor rights and relationships in China. Beyond coverage of wages, healthcare, insurance, and working hours, the Labor Law also

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¹ Labor Law (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 1995), *translated in* CHINESE L. & GOV'T, Nov.–Dec. 2002, 16 (P.R.C.).

² Regulations on the Resolution of Enterprise Labor Disputes (promulgated by the State Council, July 6, 1993, effective Aug. 1, 1993), *translated in* CHINESE L. & GOV'T, Nov.–Dec. 2002, 76 (P.R.C.).

provides for labor dispute resolution.³ This resolution process is at the center of an important shift in Chinese dispute resolution away from forms of mediation towards more adversarial arbitration and litigation offered under the Labor Law.⁴ The past decade witnessed remarkable increases in the use of formal arbitration and litigation for labor disputes.⁵ Workers are bringing their grievances through the formal resolution process in greater numbers every year with important implications for China's labor policy.

Impressive statistics illustrate the shift towards formal labor dispute resolution and highlight the potential that workers see in resolving disputes.⁶ Yet there are a number of weaknesses in the formal system, including lack of finality in judgments, difficulties with enforcement of arbitral awards, and ambiguities in the Labor Law's provisions. Increases in the number of appeals made from labor arbitration to local courts,⁷ along with attempts to reformulate labor claims as traditional civil claims,⁸ seem to be symptoms of these weaknesses.

An Interpretation of the Supreme People's Court ("SPC") on Several Issues Concerning Application of Laws in the Trial of Labor Disputes ("Interpretation")⁹ is a recent attempt to clarify the labor dispute resolution provisions of the Labor Law. While the impact of the SPC's Interpretation has yet to be seen, it successfully addresses a number of concerns with the efficacy of the formal resolution process.

An analysis of the effects of the Interpretation on labor dispute resolution can help to not only understand how the process may change in the future, but also to appreciate the SPC's increasing role in Chinese legal reforms. For workers and employers who use the process, practitioners who represent them, and others who monitor the many legal and political changes underway in China, a close look at the Interpretation will deepen understanding of the country's developing labor laws.

³ See Labor Law art. 77.

⁴ See Fu Hualing & D.W. Choy, *From Mediation to Adjudication: Settling Labor Disputes in China*, CHINA RIGHTS FORUM, Sept. 2004, at 18, 20.

⁵ See *id.*; see also Mary E. Gallagher, "Use the Law as Your Weapon!": *Institutional Change and Legal Mobilization in China*, in ENGAGING THE LAW IN CHINA: STATE, SOCIETY, AND POSSIBILITIES FOR JUSTICE 54, 67-70 (Neil J. Diamant, et al. eds., 2005).

⁶ See Gallagher, *supra* note 5, at 70 fig.3.5 (showing an increase in the percentage of labor disputes resolved by arbitration from just under thirty percent in 1996 to almost fifty percent in 2001).

⁷ See *id.* at 73.

⁸ See Hualing & Choy, *supra* note 4, at 21.

⁹ Interpretation on Several Issues Concerning the Application of the Law in the Trial of Labour Disputes (II) (promulgated by the Supreme People's Court, Aug. 14, 2006, effective Oct. 1, 2006), translated in CHINA L. & PRAC., Nov. 2006, 1 (P.R.C.) [hereinafter 2006 Interpretation].

This Comment examines the provisions of the Interpretation, its relationship to criticisms of labor dispute resolution, and its implications for the SPC's role in influencing labor policy in a socialist market economy. It argues that the Interpretation successfully responds to a number of concerns with labor dispute resolution and is likely to increase the number and effectiveness of labor disputes. Part II provides background and context for the increasing use of labor dispute resolution in China and the SPC's traditionally limited role in legal interpretation. Part III introduces the contours of the recent Interpretation and analyzes the ways in which it successfully responds to criticisms of Chinese labor dispute resolution. Part IV then argues that the SPC's approach to labor disputes exemplifies the growing role of the court in interpreting law to fill legislative gaps. Though the SPC is an organ of the Communist government, the Interpretation is evidence that the SPC is expanding its interpretive role, much like courts in other parts of the world.

II. THE INTERPRETATION CONTINUES THE HISTORICAL DEVELOPMENT AND USE OF THE LABOR DISPUTE RESOLUTION PROCESS

Recent economic development in China and the formulation of the Labor Law provide context to understand the implications of the SPC Interpretation. Laws and regulations now define Chinese labor dispute resolution, creating a process that continues to draw attention as more and more workers rely on the law.

A. *The Creation of Formal Labor Dispute Resolution Was a Response to the Negative Consequences of China's Shift to a Socialist Market Economy*

China's economic transformation fundamentally altered the country's traditional labor system. Prior to 1978, Chinese workers depended on the "iron rice bowl," the term used to describe the lifetime job security available to those who worked within state-owned enterprises ("SOEs").¹⁰ Starting in 1978, economic reforms in China required the country to remove the traditional state allocation of jobs, introduce labor contracts, and give greater attention to domestic labor conditions and relationships.¹¹ These reforms required the development of legislation as part of Deng Xiaoping's "Two-

¹⁰ VIRGINIA HARPER HO, LABOR DISPUTE RESOLUTION IN CHINA: IMPLICATIONS FOR LABOR RIGHTS AND LEGAL REFORM 11 (2003); *see also* Gallagher, *supra* note 5, at 60-61.

¹¹ *See* Gallagher, *supra* note 5, at 56.

Hands” policy: developing the economy while also strengthening the legal system.¹²

In 1986, the system of permanent employment through formal job assignments was replaced with a labor contract system.¹³ Leaders believed that the new system would create choice and initiative in the labor market, leading to increased productivity.¹⁴ The introduction of labor contracts would eventually provide workers with articulated rights and obligations to assert against employers within the formal resolution system.¹⁵ They also served dual interests by “enhancing labor efficiency and flexibility, while also protecting workers’ rights and interests.”¹⁶

A pivotal change came in 1992 when the Fourteenth Party Congress introduced the concept of a “socialist market economy.”¹⁷ This new concept encompassed a shift away from central planning and a move towards the free action of enterprises within the market.¹⁸ An amendment to the Constitution illustrated the importance of this new concept to China’s continuing development.¹⁹ Article 15 was amended in 1993 to make explicit that “[t]he state has put into practice a socialist market economy.”²⁰

With the pursuit of the new socialist market economy, a variety of labor issues arose, including unemployment, dangerous working conditions, and difficulty accessing benefits and asserting rights.²¹ As part of reform, state employment was reduced and large SOEs were sold into the private sector, resulting in high unemployment.²² Millions of migrant workers inundated coastal regions and cities, creating a “buyer’s market for labor” and giving employers an opportunity to take advantage of abundant work forces.²³ With these various issues and the tensions they created within the population, “[i]t is perhaps little wonder then that the state has made labor

¹² Jianfu Chen, *Market Economy and the Internationalisation of Civil and Commercial Law in the People’s Republic of China*, in *LAW, CAPITALISM AND POWER IN ASIA* 69, 70 (Kanishka Jayasuriya ed., 1999).

¹³ HO, *supra* note 10, at 10 n.2.

¹⁴ MARVIN J. LEVINE, *WORKER RIGHTS AND LABOR STANDARDS IN ASIA’S FOUR NEW TIGERS: A COMPARATIVE PERSPECTIVE* 79 (1997).

¹⁵ See HO, *supra* note 10, at 19, 21.

¹⁶ Gallagher, *supra* note 5, at 62.

¹⁷ LEVINE, *supra* note 14, at 6.

¹⁸ See HILARY K. JOSEPHS, *LABOR LAW IN CHINA* 12-13 (2d ed. 2003).

¹⁹ See *id.* at 42.

²⁰ Constitution (adopted by the Nat’l People’s Cong., Dec. 4, 1982), art. 15, *translated at* <http://english.people.com.cn/constitution/constitution.html> (last visited Mar. 8, 2007) (P.R.C.).

²¹ See HO, *supra* note 10, at 1-2; LEVINE, *supra* note 14, at 31.

²² HO, *supra* note 10, at 12.

²³ LEVINE, *supra* note 14, at 7.

dispute resolution a priority and that labor issues have become so central to domestic policy makers.”²⁴

The government responded by providing formal procedures. The 1993 Labor Regulations were implemented to create an administrative procedure for handling labor disputes.²⁵ The 1993 Labor Regulations replaced the 1987 Provisional Regulations on the Handling of Enterprise Labor Disputes in State Enterprises (“Provisional Regulations”),²⁶ which only applied to contract disputes and the termination of permanent SOE employees.²⁷ While the earlier Provisional Regulations introduced a three-step resolution process, the Labor Regulations expanded the scope of covered labor disputes.²⁸ The Labor Law codified the Labor Regulations and improved upon the Provisional Regulations.

B. The Labor Regulations and Labor Law Provide the Current Framework for a Three-Step Labor Dispute Resolution Process

Chinese labor dispute resolution is now a three-step process outlined in the Labor Regulations and the Labor Law.²⁹ These three steps include optional mediation, arbitration, and adjudication.³⁰ To begin the resolution process, workers and employers may apply to the dispute mediation committee within their enterprise, if one is established, or may apply directly to a labor dispute arbitration committee to pursue arbitration.³¹ According to Article 78 of the Labor Law, a dispute can only come before the people’s courts if one of the parties does not accept the arbitral award.³² Therefore, arbitration necessarily precedes litigation.

The Labor Regulations and Labor Law suggest mediation as the initial step towards resolving a labor dispute.³³ Under the Labor Regulations, one principle that labor dispute resolution “shall observe” is an emphasis on

²⁴ HO, *supra* note 10, at 35.

²⁵ Mao-Chang Li, *Legal Aspects of Labor Relations in China: Critical Issues for International Investors*, 33 COLUM. J. TRANSNAT’L L. 521, 552 (1995).

²⁶ See HO, *supra* note 10, at 38.

²⁷ JOSEPHS, *supra* note 18, at 87.

²⁸ See *id.*

²⁹ See Regulations on the Resolution of Enterprise Labor Disputes (promulgated by the State Council, July 6, 1993, effective Aug. 1, 1993), art. 6, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, at 76, 77 (P.R.C.); Labor Law (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995), art. 77, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, at 16, 28 (P.R.C.).

³⁰ Regulations on the Resolution of Enterprise Labor Disputes art. 6; Labor Law art. 77.

³¹ Regulations on the Resolution of Enterprise Labor Disputes art. 6; Labor Law art. 79.

³² Labor Law art. 78.

³³ Regulations on the Resolution of Enterprise Labor Disputes art. 6; Labor Law art. 77.

mediation.³⁴ This standard and its appearance in the Labor Law reflect traditional cultural preferences arising from Confucian and Maoist principles, as well as a historically underdeveloped court system.³⁵ The mediation committee is located within an enterprise and is comprised of representatives of the workers, employer, and trade union.³⁶ The All-China Federation of Trade Unions is affiliated with the Communist Party and independent unions are prohibited.³⁷ A representative of the trade union serves as Chair of the committee.³⁸ The language of the Labor Law does not make an agreement reached with the help of the committee legally binding, but any agreement reached “shall be implemented by the parties involved.”³⁹

Arbitration is either an initial step to resolve a labor dispute or the next step if mediation fails.⁴⁰ Arbitration takes place before a panel of representatives from the local labor administrative department, trade union, and employer,⁴¹ who make a final ruling and determine an arbitral award.⁴² A written application for arbitration must be made within sixty days from the date the dispute arises.⁴³ This rather short statute of limitations under the Labor Law overrides the six-month period under the Labor Regulations.⁴⁴

Under Article 83 of the Labor Law, adjudication is a last resort for labor disputes.⁴⁵ Appeals from an arbitral award can be made to a civil court within fifteen days after the award is received.⁴⁶ Mediation is encouraged throughout the dispute resolution process, even if a dispute reaches the courts.⁴⁷ While this is not required under the language of the Labor Law, the Labor Regulations and Article 9 of the Civil Procedure Law both emphasize

³⁴ Regulations on the Resolution of Enterprise Labor Disputes art. 4; *see also* JAMES M. ZIMMERMAN, CHINA LAW DESKBOOK: A LEGAL GUIDE FOR FOREIGN-INVESTED ENTERPRISES 395, 397 (2d ed. 2005) (observing that the arbitral tribunal must attempt mediation during the hearing).

³⁵ *See* Michael T. Colatrella, Jr., “Court-Performed” Mediation in the People’s Republic of China: A Proposed Model to Improve the United States Federal District Courts’ Mediation Programs, 15 OHIO ST. J. ON DISP. RESOL. 391, 394-99 (2000).

³⁶ Labor Law art. 80.

³⁷ Hilary K. Josephs, *Labor Law in a “Socialist Market Economy”: The Case of China*, 33 COLUM. J. TRANSNAT’L L. 559, 571-72 (1995).

³⁸ Labor Law art. 80.

³⁹ *Id.*

⁴⁰ *Id.* art. 79.

⁴¹ *Id.* art. 81.

⁴² *Id.* art. 83.

⁴³ *Id.* art. 82.

⁴⁴ Regulations on the Resolution of Enterprise Labor Disputes (promulgated by the State Council, July 6, 1993, effective Aug. 1, 1993), art. 23, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, at 76, 80 (P.R.C.).

⁴⁵ Labor Law art. 83.

⁴⁶ *Id.*

⁴⁷ ZIMMERMAN, *supra* note 34, at 397.

mediation by encouraging courts to pursue conciliation with the consent of the parties.⁴⁸

Since its inception, many Chinese workers and employers have turned to this three-step resolution process.⁴⁹ Recent trends demonstrate that they are relying on the process in greater numbers every year.⁵⁰

C. *Statistics Illustrate a Dramatic Increase in the Use of Arbitration and Adjudication Since the 1990s*

Considering the traditional preference for mediation of disputes, statistics of formal labor dispute resolution are surprising. Community resolution of disputes has a long tradition in China's cultural and political development,⁵¹ illustrated by a two thousand year old Confucian proverb, "it is better to die of starvation than to become a thief; it is better to be vexed to death than to bring a lawsuit."⁵² In imperial China, mediation was often favored because of the "inaccessible and inadequate court system," which required traveling long distances to the nearest courts to face corrupt and intimidating magistrates.⁵³ When the People's Republic of China was founded in 1949 and previous legal systems were rejected, mediation persisted and was codified in the 1954 Provisional General Rules for the Organization of People's Mediation Committees.⁵⁴ Throughout Mao's leadership and the rise of Communism, mediation represented the belief that individual interests must give way to community and harmony.⁵⁵ As one scholar said, "[I]nformal mediation played a strong ideological role, serving to mobilize the masses through grassroots organizations."⁵⁶ Therefore, mediation became a tool for the government to control the avenues available for dispute resolution.

⁴⁸ Regulations on the Resolution of Enterprise Labor Disputes art. 4; Civil Procedure Law (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991), art. 9, translated at CHINACOURT.ORG, <http://en.chinacourt.org/public/detail.php?id=2694> (last visited Mar. 8, 2007) (P.R.C.).

⁴⁹ See Gallagher, *supra* note 5, at 54.

⁵⁰ See *id.*; see also *Labour disputes and wilderness cases more common in courtroom*, CHINADAILY, Mar. 11, 2002, available at http://www.chinadaily.com.cn/en/doc/2002-03/11/content_110270.htm (last visited Mar. 8, 2007).

⁵¹ See Colatrella, *supra* note 35, at 395-96.

⁵² Jun Ge, *Mediation, Arbitration and Litigation: Dispute Resolution in the People's Republic of China*, 15 UCLA PAC. BASIN L.J. 122, 133 (1996) (citing Jerome Alan Cohen, *Chinese Mediation on the Eve of Modernization*, 54 CAL. L. REV. 1201, 1201 (1966)).

⁵³ Colatrella, *supra* note 35, at 397.

⁵⁴ See Jun Ge, *supra* note 52, at 123.

⁵⁵ See Colatrella, *supra* note 35, at 398.

⁵⁶ Margaret Y.K. Woo, *Law and Discretion in the Contemporary Chinese Courts*, 8 PAC. RIM L. & POL'Y J. 581, 596 (1999).

Statistics illustrate an important shift away from mediation to arbitration for labor disputes. From 1996 to 2001, there was a marked increase in the use of arbitration with a parallel decrease in the use of mediation.⁵⁷ During that period, the number of cases accepted for mediation fell from 118,732 to 6,374.⁵⁸ In contrast, the number of cases accepted for arbitration grew from 47,951 to 184,116 in 2002.⁵⁹ It is important to note that any statistics related to the formal dispute resolution process reflect those cases that actually reach formal forums. This data is only a portion of the labor disputes that actually arise. However, the increase in the number of cases arbitrated each year does suggest that workers and their employers are using arbitration to reach a resolution.

Along with increases in arbitration, statistics also show a marked increase in adjudication.⁶⁰ From 1995 to 2001, the number of labor disputes adjudicated in Chinese courts each year increased from 28,285 to 100,923 cases.⁶¹ In 2005, parties filed over 300,000 labor lawsuits.⁶² That number is a 20.5% increase from 2004.⁶³ The overall increase in labor disputes relates to “[i]ncreasing urbanization, the restructuring of state enterprises, and the new wave of foreign direct investment into China since 1992.”⁶⁴ The 2006 Interpretation comes at a time when use of labor dispute resolution is at its peak after over a decade of development.

D. During Early Economic and Legal Reforms, the Ability of the SPC to Help Implement the Labor Law Was Formally Constrained

When workers first began to use the formal labor dispute process, the SPC did not act to interpret or aid its implementation. Formally, the SPC is limited in its duties. Conflicting provisions of the Constitution govern the powers of the SPC. While the Constitution provides that the “people’s courts shall, in accordance with the law, exercise judicial power independently and are not subject to interference by administrative organs, public organizations or individuals,”⁶⁵ the preamble suggests otherwise.⁶⁶ In

⁵⁷ See Hualing & Choy, *supra* note 4, at 18; see also Gallagher, *supra* note 5, at 54, 67-70.

⁵⁸ Hualing & Choy, *supra* note 4, at 18.

⁵⁹ See *id.*

⁶⁰ Gallagher, *supra* note 5, at 72-73.

⁶¹ Hualing & Choy, *supra* note 4, at 20.

⁶² He Huifeng, *300,000 Labour Row Cases Filed Last Year*, SOUTH CHINA MORNING POST (Hong Kong), May 12, 2006, at 10.

⁶³ *Id.*

⁶⁴ Mao-Chang Li, *supra* note 25, at 523.

⁶⁵ Constitution (adopted by the Nat’l People’s Cong., Dec. 4, 1982) art. 126, *translated at* <http://english.people.com.cn/constitution/constitution.html> (last visited Mar. 8, 2007) (P.R.C.).

⁶⁶ *Id.*

its preamble, the Constitution requires that legal decisions be based on four principles: 1) “the leadership of the Communist Party,” 2) “the guidance of Marxism-Leninism and Mao Zedong Thought,” 3) “the people’s democratic dictatorship,” and 4) “the socialist road.”⁶⁷ These are the four cardinal principles espoused by Deng Xiaoping.⁶⁸ Political influence and policy, then, is made an integral part of judicial decision-making in China. In fact, “[n]ot only is the substance of law determined by Party policy, but the interpretation and application of law remains subject to changes in Party policy.”⁶⁹ Because the SPC helps to interpret the law,⁷⁰ its interpretations are subject to political influences and policies.⁷¹

The functions of the SPC include interpretation, adjudication, legislation, and general administration of the judiciary.⁷² Interpretation was traditionally limited because the Constitution only authorized the Standing Committee of the National People’s Congress to interpret national laws.⁷³ However, the 1981 Resolution of the Standing Committee of the National People’s Congress Providing an Improved Interpretation of the Law (“Interpretation Resolution”) extended interpretive powers to other state organs, including the SPC.⁷⁴ The Interpretation Resolution, which was not superceded by the 1982 Constitution, authorized the SPC to interpret “questions involving the specific application of laws and decrees in court trials,” meaning adjudication work.⁷⁵ While the Interpretation Resolution gave the SPC increased competencies, those new powers were still limited.

With the increasing use of labor arbitration and litigation, weaknesses in the dispute resolution process became apparent, encouraging the SPC to act by promulgating the 2006 Interpretation.

⁶⁶ Susan Finder, *The Supreme People’s Court of the People’s Republic of China*, 7 J. CHINESE L. 145, 148 (1993).

⁶⁷ See Woo, *supra* note 56, at 592 (quoting the preamble of the Constitution).

⁶⁸ STANLEY B. LUBMAN, *BIRD IN A CAGE: LEGAL REFORM IN CHINA AFTER MAO* 126 (1999).

⁶⁹ Woo, *supra* note 56, at 592.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Finder, *supra* note 66, at 164.

⁷³ *Id.*

⁷⁴ Resolution of the Standing Committee of the National People’s Congress Providing an Improved Interpretation of the Law (promulgated by the Standing Comm. Nat’l People’s Cong., June 10, 1981, effective June 10, 1981), translated at http://www.novexc.com/interp_of_law.html (last visited Mar. 8, 2007) (P.R.C.).

⁷⁵ Finder, *supra* note 66, at 164-65.

III. THE INTERPRETATION SUCCESSFULLY ADDRESSES DIFFICULTIES WITH LABOR DISPUTE RESOLUTION

The provisions of the Interpretation make a number of positive changes to labor dispute resolution that benefit workers. As the next section argues, increases in litigation and attempts by workers to litigate rather than to go through mandatory arbitration illustrate weaknesses in the process. The formal labor dispute process has been criticized for lacking finality, raising issues with compliance, and failing to provide truly non-partisan forums in practice.⁷⁶ The Interpretation makes four important changes. The SPC addresses these weakness and provides more opportunities for workers to bring their disputes through the formal process by clarifying how to determine the date when a labor dispute arose, allowing certain types of disputes to go straight to civil court, requiring courts to accept appeals and applications for enforcement in specific cases, and allowing tolling of the application period in certain circumstances.

A. *The Interpretation Requires Acceptance of Appeals for Specific Claims, Helping to Improve Enforcement of Arbitral Awards*

Arbitration procedures raise concerns about enforcement. While arbitral awards are binding, the increasing number of appeals by workers suggests that employers are not following through on their legal obligations.⁷⁷ The Interpretation does not directly address the lack of finality in the dispute resolution process, but indirectly provides for final judgment by requiring courts to accept certain types of appeals and enforcement applications.

1. *The Rising Number of Appeals to Civil Courts Reveals Difficulties with Enforcing Arbitral Awards*

Although the Labor Law and the Labor Regulations intend litigation to be a last resort for disputes, the statistics cited above show that labor adjudication is marked by dramatic increases. The process has been described as “one hearing and two appeals.”⁷⁸ While only 1.7% of arbitral decisions were appealed in 1995, nearly seventy percent were appealed in

⁷⁶ See Gallagher, *supra* note 5, 73-74; see also HO, *supra* note 10, at 172-73 (discussing difficulties with enforcement); and Hualing & Choy, *supra* note 4, at 19-21 (discussing difficulties with finality and bias forums).

⁷⁷ See Gallagher, *supra* note 5, at 73-4.

⁷⁸ *Id.* (quoting a private interview with a lawyer in Beijing) (internal quotation marks omitted).

Beijing and Shanghai in 2003.⁷⁹ A plausible explanation for this increase is that arbitration panels are not providing final, legally-binding judgments in a given dispute. The high number of appeals suggests two possibilities for why this might be the case: either those who are unhappy with arbitral awards are appealing, or disputants are having difficulty enforcing arbitral awards and are hoping that the courts will ensure compliance.

Given that most arbitration decisions are made in favor of workers rather than their employers,⁸⁰ it seems more likely that the increase in appeals reflects attempts to enforce arbitral judgments against employers. Workers bring almost ninety percent of all labor disputes.⁸¹ Statistics for major Chinese provinces illustrate that workers often win labor disputes. In Shangdong, Guangdong, and Heilongjiang Provinces, workers respectively won 62.46%, 55.88%, and 55.32% of labor disputes arbitrated from 1995 to 2001.⁸² These regions represent a majority of labor disputes, since they are coastal regions where migrant labor is concentrated.⁸³ For example, one-third of Chinese labor disputes were in Guangdong Province at the end of the 1990s.⁸⁴ In addition, a 1998 Ministry of Labor report found that fifty-six percent of disputes initiated by workers came out in their favor while only sixteen percent of cases were decided in favor of employers.⁸⁵ The remaining disputes were mediated, withdrawn, or went to the people's courts.⁸⁶ The increase in appeals poses "an interesting and possibly disturbing development"⁸⁷ because workers may have difficulty enforcing the arbitral awards against employers.⁸⁸ Employers appeal only about five percent of arbitral decisions,⁸⁹ suggesting appeals have "more to do with enforcement of the decision than with its outcome."⁹⁰ Therefore, it appears that workers have to rely on the courts to force compliance in the face of resistance by employers.

⁷⁹ *Id.*

⁸⁰ *See, e.g.* HO, *supra* note 10, at 168.

⁸¹ *Id.* at 152.

⁸² Hualing & Choy, *supra* note 4, at 21.

⁸³ *Id.* at 18.

⁸⁴ *Id.*

⁸⁵ ZIMMERMAN, *supra* note 34, at 398.

⁸⁶ *Id.*

⁸⁷ Gallagher, *supra* note 5, at 73-4.

⁸⁸ *See id.*

⁸⁹ Isabelle Thireau & Hua Linshan, *One Law, Two Interpretations: Mobilizing the Labor Law in Arbitration Committees and in Letters and Visits Offices*, in *ENGAGING THE LAW IN CHINA: STATE, SOCIETY, AND POSSIBILITIES FOR JUSTICE* 84, 106 n.29 (Neil J. Diamant et al. eds., 2005).

⁹⁰ Gallagher, *supra* note 5, at 74.

2. *The Interpretation Indirectly Provides for Enforcement by Requiring Acceptance of Appeals in Specific Instances*

The Interpretation requires courts to accept appeals from arbitration panels for certain types of labor disputes.⁹¹ According to the language of the Labor Law, parties “can raise a lawsuit” if they object to the arbitral ruling, but there is no language in the Labor Law requiring the people’s courts to accept these appeals.⁹² Under the Interpretation, civil courts must accept an appeal from arbitration if the conflict concerns whether the employment relationship was cancelled or terminated, or whether compensation should be paid for cancellation or termination.⁹³ A court must also accept an appeal in a case involving a request by the worker after the relationship is cancelled or terminated for money or collateral paid for her employment contract.⁹⁴ In a case over treatment of a work-related injury or an occupational disease, a court must also accept an appeal from arbitration.⁹⁵ Finally, a court must accept an appeal in a dispute over advanced payment of wages or medical expenses, or if the employer fails to make the payments following an arbitration ruling.⁹⁶

Requiring courts to accept appeals in these four types of labor disputes expands the jurisdiction of the people’s courts over labor disputes and will likely lead to increased labor litigation in the future. The Interpretation allows workers to more easily appeal unfavorable arbitral awards and will aid enforcement by ensuring that more appeals are actually accepted. While the Interpretation does not directly address the noncompliance of employers with arbitration awards, clear identification of disputes that will be accepted if appealed may make employers more likely to cooperate in order to avoid litigation.

B. *The Interpretation Defines and Allows for Suspension of the Arbitration Application Period, Addressing Prior Difficulties in Determining When Disputes Arise*

The rising number of appeals also illustrates that workers are challenging rejections by arbitral panels based on the application period. How to determine when the application period begins was never clear, so

⁹¹ 2006 Interpretation, *supra* note 9, art. 4-6, 8.

⁹² Labor Law (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995), art. 83, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, at 16, 29 (P.R.C.).

⁹³ *Id.* art. 4.

⁹⁴ *Id.* art. 5.

⁹⁵ *Id.* art. 6.

⁹⁶ *Id.* art. 8.

arbitral panels were able to reject late applications. The Interpretation provides two solutions that will aid workers.

1. *The Increasing Number of Appeals Reveals Difficulties with the Application Period for Arbitration*

The increase in appeals of arbitral decisions may relate to the Labor Law's application period for labor disputes. As mentioned above, the Labor Law requires that applications be made to arbitration within sixty days after the dispute arises.⁹⁷ Workers are not always aware of this time limit and will often approach the employer to negotiate a resolution before considering arbitration.⁹⁸ Yet, by approaching an employer, a worker may use up part or all of the sixty-day statute of limitations.⁹⁹ In its 2001 Interpretations Concerning Several Issues Regarding the Application of Law to the Trial of Labor Dispute Cases ("2001 Interpretation"), the SPC allows workers to appeal to civil court when an arbitration panel rejects an application based on the expiration of the application period.¹⁰⁰ Therefore, the increase in appeals may also result from workers taking advantage of this opportunity to have a court review the arbitration committee's decision to reject an application. However, the problem of determining when the period begins was not addressed by the 2001 Interpretation.

2. *The 2006 Interpretation Defines When the Application Period Begins, Increasing the Likelihood that Arbitration Applications Will Be Accepted*

The 2006 SPC Interpretation defines how to determine when a labor dispute arises for purposes of calculating the arbitration application period,¹⁰¹ perhaps "one of the most contentious issues in [China's] employment law."¹⁰² In a wage payment dispute during an ongoing employment relationship, the dispute arises when the employer sends a written notice of its refusal to pay.¹⁰³ If there is no such notice, the dispute

⁹⁷ Labor Law (promulgated by the Standing Comm. Nat'l People's Cong., July 5, 1994, effective Jan. 1, 1995), art. 82, *translated in* CHINESE L. & GOV'T, Nov.-Dec. 2002, at 16, 29 (P.R.C.).

⁹⁸ Hualing & Choy, *supra* note 4, at 19-20.

⁹⁹ *Id.*

¹⁰⁰ Interpretations on Several Questions Concerning Several Issues Regarding the Application of Law to the Trial of Labor Dispute Cases (promulgated by the Supreme People's Court, Apr. 16, 2001, effective Apr. 30, 2001), art. 3, *translated in* INSINOLAW (last visited Mar. 8, 2007) (P.R.C.) [hereinafter 2001 Interpretation].

¹⁰¹ 2006 Interpretation, *supra* note 9, art. 1.

¹⁰² Andreas Lauffs et al., *New Rules for Labour Dispute Litigation*, CHINA L. & PRAC., Nov. 2006, 1.

¹⁰³ 2006 Interpretation, *supra* note 9, art. 1(1).

arises on the date the worker asserts her rights.¹⁰⁴ For problems concerning cancellation or termination of an employment relationship where the employer cannot prove that the worker received a written notice, the dispute arises on the date the worker asserts her rights.¹⁰⁵ Finally, for a dispute over payment of wages, severance, or benefits after the labor relationship is cancelled or terminated, the dispute arises either on the date the employer undertook to make payment or on the date the relationship was cancelled or terminated.¹⁰⁶

This portion of the 2006 Interpretation is beneficial to workers for two reasons. First, the SPC places the burden of proof on the employer to show that written notice was given.¹⁰⁷ Second, it makes the filing date of an application more favorable to workers by calculating the application period from the date the worker asserts her rights.¹⁰⁸ There may be future complications when determining what constitutes the assertion of one's rights, such as whether it is the worker's initial attempt to approach the employer, or other actions taken by the worker. Nonetheless, these provisions hold promise for workers whose disputes would have been rejected prior to the 2006 Interpretation based on the application period.

The 2006 Interpretation also allows suspension of the application period for arbitration in three situations. If a party is claiming a right against another party,¹⁰⁹ is making a request to a department for relief,¹¹⁰ or if the opposing party consents to fulfill its obligations,¹¹¹ then the arbitration application period for the complaining party is tolled.¹¹² The burden is on the party seeking to discontinue the application period to prove that one of these three situations is present.¹¹³ If one of the requirements is proven, then the arbitration application term will "recommence" either from the date the opposing party refuses to perform its obligation or from the date the department makes its decision on whether to provide relief.¹¹⁴ The SPC's decision to allow suspension alleviates one of the primary concerns with the short sixty-day statute of limitations—workers will no longer be penalized for pursuing alternative resolution options outside arbitration. By clarifying

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* art. 1(2).

¹⁰⁶ *Id.* art. 1(3).

¹⁰⁷ *Id.* art. 1(1)-(2).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.* art. 13(1).

¹¹⁰ *Id.* art. 13(2).

¹¹¹ *Id.* art. 13(3).

¹¹² *Id.* art. 13.

¹¹³ *Id.*

¹¹⁴ *Id.*

when disputes arise and no longer penalizing workers who seek other forms of redress, the Interpretation will likely lead to more arbitration.

C. *The Interpretation Recognizes Recent Attempts to Bypass Mandatory Arbitration by Providing for Direct Litigation in Certain Labor Disputes*

The increasing litigation statistics include a small number of attempts by workers to bypass mandatory arbitration and bring their claims directly to court.¹¹⁵ Because only courts can provide final judgment in labor disputes, these attempts could be responses to the challenges of enforcement discussed above. The Interpretation explicitly provides for litigation without prior arbitration in specific circumstances.

1. *Recent Attempts to Reformulate Labor Disputes as Traditional Civil Claims Bring Disputes Directly to Court, Avoiding Formal Arbitration*

Most disputes between workers and employers will fall within the broad scope of the Labor Law. The 2001 Interpretation defines a “labor dispute” as a dispute between a worker and employer under a labor contract or where a labor relationship exists, or a dispute involving benefits such as medical coverage and insurance.¹¹⁶ The Labor Law and Labor Regulations require that all labor disputes go through mandatory arbitration before litigation.¹¹⁷ Since labor disputes are so broadly defined, there is little room for disputes to go directly to litigation. In fact, the Ministry of Labor published an opinion in 2002 that provided that an arbitration committee shall accept and hear a labor case, but only if it “falls into the applicable scope of the Labor Law and the scope of acceptable cases” in the Labor Regulations.¹¹⁸

However, there have been some instances where workers reformulated their claims as civil actions. For example, in the Shenzhen region, lawyers brought non-payment of wages disputes as claims for ordinary debt and injuries received on the job as tort claims.¹¹⁹ Others brought claims for

¹¹⁵ See Hualing & Choy, *supra* note 4, at 21.

¹¹⁶ 2001 Interpretation, *supra* note 100, art. 1.

¹¹⁷ Labor Law (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995), art. 79, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, at 16, 28 (P.R.C.); Regulations on the Resolution of Enterprise Labor Disputes (promulgated by the State Council, July 6, 1993, effective Aug. 1, 1993), art. 6, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, at 76, 77 (P.R.C.).

¹¹⁸ Opinion Regarding Some Problems in Implementation and Enforcement of the Labor Law of the People’s Republic of China, Ministry of Labor, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, 50, 70.

¹¹⁹ Hualing & Choy, *supra* note 4, at 21.

wrongful termination or invasion of privacy rather than pursuing arbitration.¹²⁰ These reformulations are made possible by provisions of the Civil Procedure Law. Under Article 108 of the Civil Procedure Law, a plaintiff must have a direct interest in the case, specify a defendant, make a distinct claim based on facts, have cause for the lawsuit, and bring a case that falls within the scope of civil lawsuits.¹²¹ Workers involved in a labor dispute likely have little difficulty meeting the first three requirements. Generally, claims are based on specific events experienced by a worker or group of workers.¹²² The challenge lies in reformulating a labor dispute to fall into the category of civil lawsuits, outside the purview of the Labor Law and the situations defined broadly in the 2001 Interpretation.

An example of reformulation is an employer's failure to pay wages, which can be considered a debt owed by the employer to the worker. Under Article 189 of the Civil Procedure Law, a claim for debt may be brought if the parties are not involved in another "obligation dispute" and if any warrant for payment that is issued by the court can be served on the debtor.¹²³ Additionally, the amount of money and evidence for the claim must be specified in the application.¹²⁴ Therefore, as long as there are no other disputes between the worker and the employer, it is possible to reformulate a labor claim and to bring suit directly to court.

2. *The 2006 Interpretation Makes Civil Courts Directly Accessible for Certain Disputes*

The SPC allows two kinds of labor disputes to come to court as common civil claims.¹²⁵ If a worker has evidence of a written acknowledgment for wages owed by an employer and has no other claims related to the employment relationship, then the worker can bring a claim to court as a common civil dispute.¹²⁶ This particular provision may reflect the SPC's acknowledgment that lawyers are reformulating claims.

The second instance in which labor claims can be brought as civil claims based on the Interpretation relates to mediation agreements. As previously mentioned, mediation agreements under the Labor Law "shall be

¹²⁰ ZIMMERMAN, *supra* note 34, at 398.

¹²¹ Civil Procedure Law (promulgated by the Standing Comm. Nat'l People's Cong., Apr. 9, 1991, effective Apr. 9, 1991), art. 108, *translated at* CHINACOURT.ORG, <http://en.chinacourt.org/public/detail.php?id=2694> (last visited Mar. 8, 2007) (P.R.C.).

¹²² See Thireau & Linshan, *supra* note 89, at 91.

¹²³ Civil Procedure Law art. 189.

¹²⁴ *Id.*

¹²⁵ 2006 Interpretation, *supra* note 9, arts. 3, 17.

¹²⁶ *Id.* art. 3.

implemented by the parties,” but no language in the Labor Law makes these agreements legally binding or enforceable.¹²⁷ In the Interpretation, the SPC explicitly makes agreements binding when reached before a mediation committee and allows the worker to bring suit as a common civil dispute if the employer fails to perform its obligations under that agreement.¹²⁸ This provision offers an important enforcement mechanism, placing mediation agreements on the same plane as arbitral awards.

The likely result of each of these changes under the Interpretation will be increased labor arbitration and litigation. The statistics discussed in Part II.C illustrate that workers turn to labor dispute resolution in growing numbers every year. The changes made by the 2006 Interpretation will only continue this impressive trend. When the SPC introduced the 2001 Interpretation, not all judges and arbitrators were aware of its provisions, limiting its initial effect on labor disputes.¹²⁹ It is possible that the 2006 Interpretation will face initial limitations as actors begin to learn of its provisions, but it holds promise for future arbitration and litigation.

The increasing trend toward arbitration and litigation, however, may challenge the institutional capacity of arbitration panels, civil courts, and local attorneys who handle the volumes of disputes brought each year. Arbitration panels are already “overburdened” and “understaffed,”¹³⁰ patterns that would only continue with a greater influx of cases. Courts, too, are already dealing with a high volume of civil and commercial litigation and are hesitant to accept labor disputes, which are seen as “trivial and tedious.”¹³¹ Chinese lawyers have an “aversion to representing workers with labor grievances” for a number of reasons, including the low fee potential of labor disputes.¹³² While the Interpretation extends the jurisdiction of civil courts, access to justice for workers may be limited by the unwillingness of lawyers to represent them. These other institutional aspects of labor dispute resolution will also need revision to create a truly effective process, but the Interpretation is an important step in the right direction for workers who choose to rely on the Labor Law.

¹²⁷ Labor Law (promulgated by the Standing Comm. Nat’l People’s Cong., July 5, 1994, effective Jan. 1, 1995), art. 80, *translated in* CHINESE L. & GOV’T, Nov.–Dec. 2002, 16, 29 (P.R.C.).

¹²⁸ 2006 Interpretation, *supra* note 9, art. 17.

¹²⁹ Ho, *supra* note 10, at 153.

¹³⁰ Gallagher, *supra* note 5, at 74.

¹³¹ Hualing & Choy, *supra* note 4, at 20–21.

¹³² Ethan Michelson, *The Practice of Law as an Obstacle to Justice: Chinese Lawyers at Work*, 40 LAW & SOC’Y REV. 1, 1, 27 (2006).

IV. THE INTERPRETATION ILLUSTRATES THE INCREASING ROLE OF THE SPC IN INTERPRETING LABOR LAWS

The Chinese legal system is often described as “weak, easily corrupted, and subservient to the Chinese Communist Party (CCP).”¹³³ However, as one scholar observes, “[o]ne can recognize in the working of [the] Chinese legal system the dual promotion of social welfare and individual rights that is apparent in Western legal systems.”¹³⁴ The Interpretation provides an example of the dual considerations of social welfare under the policies of the CCP and individual rights provided under the Labor Law. The Interpretation suggests that Chinese law does function in the domain of labor relations, and that the SPC plays an increasingly important part in that development.

A. *The SPC’s Role in Interpreting Law Is Expanding Beyond Its Official Bounds*

Like all governmental organs in China, the SPC has a carefully defined role within the structure of the state. That role traditionally included a limited ability to interpret laws.¹³⁵ However, the SPC’s powers to interpret are expanding. Subsequent to legal developments such as the Labor Law, the SPC’s historical role as a judicial organ of the central government is evolving.

I. *The Imperfect Legal Reforms That Accompanied Promotion of the Socialist Market Economy Forced the Court to Expand its Interpretive Role*

The SPC has increasingly exercised the power of interpretation provided in the Interpretation Resolution.¹³⁶ It has done so out of necessity. Legal reform in the 1980s and 1990s produced vague legislation, making it difficult for courts to apply promulgated laws.¹³⁷ Legal reform was originally envisioned as gradual. As Deng Xiaoping put it, “we should not wait for a ‘complete set of equipment.’ In short, it is better to have some laws than none, and better to have them sooner than later.”¹³⁸ The result was colorfully described by one scholar as a “disparate mass of laws and

¹³³ Gallagher, *supra* note 5, at 54.

¹³⁴ JOSEPHS, *supra* note 18, at 9.

¹³⁵ See *supra* Part II.D.

¹³⁶ Finder, *supra* note 66, at 165.

¹³⁷ *Id.* at 314.

¹³⁸ Jianfu Chen, *supra* note 12, at 72.

regulations [that] . . . does not possess sufficient unity to be regarded as a coherent body of law.”¹³⁹ The entire constellation of labor law has not been immune to these inconsistencies, as the administrative regulations and local and county rules tend to conflict as much as the Labor Law.¹⁴⁰ With its power to interpret laws, the SPC stepped in to fill legislative gaps. This was referred to as “a creative law-making process,”¹⁴¹ and it appears to be a process that the Standing Committee is willing to allow. The Standing Committee has not interfered, even where SPC interpretations directly conflict with a given piece of legislation.¹⁴²

It is still important to consider the SPC’s administrative role and continuing relationship with the CCP. The government continues to control the available paths to dispute resolution through the Labor Law and Labor Regulations. However, the SPC is acting to aid the efficiency of the process and workers’ access to that process. The Interpretation is an example of court-made rules responding to ambiguities in the law to foster greater efficiency. The Labor Law provides an example of legislation that did not keep pace with the needs of workers, arbitration panels, or courts. Increasing disputes emphasize the ambiguities of the Labor Law’s provisions concerning the application period and other aspects of dispute resolution. The SPC responded with legal interpretation, filling in gaps and even expanding court jurisdiction over specific types of labor claims.

2. *This Interpretive Role Is Not Unique to China’s Courts, and Reflects Similar Evolutions of Judicial Power in Other Countries*

China’s problems are not unique, as Western democracies also deal with controversies over the interpretive power of courts.¹⁴³ For example, following the birth of the concept of separation of powers after the French Revolution, civil law countries strictly limited courts to prevent them from interfering in the law and policy-making sphere of the legislature.¹⁴⁴ Those prohibitions did not last long.¹⁴⁵ Eventually, both civil and common law countries came to accept some degree of judicial interpretation.¹⁴⁶ For example, in Germany, another civil law country, there is no legislation

¹³⁹ Perry Keller, *Sources of Order in Chinese Law*, 42 AM. J. OF COMP. L. 711, 711 (1994).

¹⁴⁰ Ying Zhu, *Economic Reform and Labour Market Regulation in China*, in LAW AND LABOUR MARKET REGULATION IN EAST ASIA 157, 170 (Cooney et. al. eds., 2002).

¹⁴¹ LUBMAN, *supra* note 68, at 8.

¹⁴² Finder, *supra* note 66, at 189.

¹⁴³ LUBMAN, *supra* note 68, at 281.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 281-82.

covering trade unions or the right to strike.¹⁴⁷ The German Federal Labor Court and the German Federal Constitutional Court have both stepped in to provide case law in these open areas of labor law.¹⁴⁸ It is not unusual, therefore, for courts to take on a more active role to better facilitate the law.

B. At Least Until Legislative Changes Are Made, the SPC Will Likely Continue to Interpret Law to Ensure More Effective Use of the Labor Law

The SPC is likely to continue balancing the competing interests of the socialist market economy with the need to protect workers, if only to prevent social instability. The SPC chose a reasonable approach in the Interpretation and its effects will become apparent in the next few years.

Beyond its substantive provisions, the Interpretation will likely affect the capacity of arbitration panels and courts to hear the increasing number of labor disputes. The SPC is the administrator of the judicial system.¹⁴⁹ By expanding the jurisdiction of civil courts to hear certain types of labor disputes, the Interpretation removes some of the pressure placed on already strained arbitration committees. At the same time, the Interpretation's overall impact will likely lead to an increasing number of disputes so that capacity and resources remain challenges to effective dispute resolution. However, legislative changes are necessary to fully respond to those concerns. In the meantime, the SPC is taking an active role.

V. CONCLUSION

The 1994 Labor Law bestows rights that an impressive number of workers assert each year. Statistics illustrate the transition of labor dispute resolution away from mediation within enterprises toward adjudication and litigation in a formal setting. Unfortunately, workers who use labor dispute resolution are only a small portion of those who could assert their rights.

The 2006 Interpretation by the SPC expands the reach of the Labor Law to encompass a larger variety of disputes and to give workers more opportunities to bring claims that would have been denied in the past. It clarifies ambiguities that once drew criticism. There is now a clear standard for determining when a labor dispute arises. Courts must now accept certain appeals of arbitral decisions. Workers will no longer be penalized for

¹⁴⁷ Marita Korner, *German Labor Law in Transition*, GERMAN L. J., Apr. 2005, available at <http://www.germanlawjournal.com/print.php?id=594>.

¹⁴⁸ *Id.*

¹⁴⁹ Finder, *supra* note 66, at 164.

pursuing alternative means of resolving their disputes because the application period for arbitration can be tolled. Certain claims can bypass arbitration and no longer have to rely on reformulations under the Civil Procedure Law.

There will likely be difficulties with the capacity of legal institutions to handle the continuing increases in arbitration and litigation that the 2006 Interpretation will fuel. Consideration of these challenges will become even more important as dispute resolution increases. As the SPC's interpretive role expands, the court can aid with those challenges. But the ultimate decisions rest with the other organs of government that crafted the Labor Law. The SPC can only extend the reach of the Labor Law so far. The court has taken an important step and workers will benefit from it.

As long as there are inconsistencies and gaps in the law, the court will continue to respond with needed changes. The effects of the SPC Interpretation will not be known for a number of years, but it holds promise for the future of labor dispute resolution in China.